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PACIFIC TELESIS
Group-Washington

September 16, 1996

DOCKET FILE COPY ORIGINAL

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Dear Mr. Caton:

Re: *CC Docket No. 95-116, Telephone Number Portability*

On behalf of Pacific Telesis Group, please find enclosed an original and six copies of its *"Reply Comments"* in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

Alan Ciamporcero

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Telephone Number Portability	CC Docket No. 95-116

REPLY COMMENTS OF PACIFIC TELESIS GROUP

Pacific Telesis Group files these Reply Comments on the Further Notice of Proposed Rulemaking relating to cost recovery for number portability.

Commenting parties have widely divergent ideas about how cost recovery should be structured. Carriers who will not incur substantial costs within their network to implement number portability argue that all individual carrier costs should be absorbed by the carrier; carriers who will incur substantial costs to implement (primarily incumbent LECs) want to ensure their costs are recoverable. Yet, all parties wave the "competitive neutrality" banner and argue that their method of cost recovery meets this standard.

I. AN END USER CHARGE SHOULD BE MANDATED SO THAT COSTS CAN BE RECOVERED

Various companies argue that the FCC should not mandate an explicit charge on end user bills to recover the costs incurred by carriers. Teleport Communications Group, for example, argues that each carrier "must be permitted to choose to recover such costs thorough customer access line charges, subject to applicable price cap restrictions, or to absorb voluntarily such costs in whole or in part."[1] . Similarly, AT&T argues that "carriers should be afforded the flexibility to recover charges from customers consistent with market demands and developments."[2] . These commenters ignore a fundamental fact; regulated LECs do not have unrestrained options for changing their prices. Pacific, as well as other price cap LECs, are not free to adjust prices as our competitors can. We must evaluate our price decisions in accordance with out regulatory requirements.

Our customers should bear the costs of number portability in our network. Number portability represents legitimate costs incurred to improve and enhance the network. The additional functionality of allowing customers to change carriers while retaining their phone number represents additional value to customers for which payment is appropriate.

A mandatory end user charge should be established so that all carriers, including price cap LECs, may get a return for their investment in the

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[1] TCG, p.10. See also AT&T, p. 15.

[2] AT&T, p.15.

network. Without such a mandatory charge, the FCC order for number portability becomes confiscatory. We agree with USWest that to avoid confiscation, each order of the Commission must, within its own four corners, allow sufficient rates to recover the costs of the obligation it imposes.[3]

CLECs argue that no end user charge should be mandated, and particularly, no end user charge should be separately stated as a number portability charge.[4] These carriers argue that customers should not know what the true costs of number portability since it might "promote hostility toward number portability as a concept and toward competitors as users of the numbers."[5] Customers are entitled to know the costs of competition. As the California Department of Consumer Affairs notes, a separate line item specifically calling out the purpose of the charge is appropriate.[6] The Commission should mandate that all carriers include such a line item, and not bury any number portability charges in their rates.

The mandatory end user charge should be designed (as proposed by US West (pp. 18-19)) whereby end users, as well as resellers and purchasers of unbundled network elements, are assessed a number portability charge. While CLECs claim that number portability costs should not be recovered from other

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[3] USWest, p. 9.

[4] See, for example, TCG, p. 10, ALTS, p. 4.

[5] TCG, pgs. 10-11.

[6] California Department of Consumer Affairs, p. 24.

carriers by means of interconnection charges[7], such claims do not withstand scrutiny. A purchaser of unbundled switching is purchasing the features and functionality of the switch. Once portability is deployed, that switch will include the portability feature. The costs of that feature are properly included in the TELRIC computation of costs, whether as a part of the TELRIC cost study or as an addition to the TELRIC computation.

Finally, an end user charge results in the least distortion of economic efficiency.[8] As Emmerson notes, the demand for access is very inelastic; therefore a surcharge on access lines "would reduce economic efficiency very little while enabling LECs to recover the common cost of mandatory number portability."[9]

We disagree with those carriers who propose the end user charge as a percentage of total billed revenue. While such a proposal may be workable if the surcharge is identical among all carriers in a given region, it is not appropriate with our proposal. Our proposal contemplates each carrier's end user surcharge to be dependent on the costs it has incurred; thus each carrier will have a different surcharge amount. A surcharge based on total billed revenue will have the effect of encouraging high revenue customers to port to a carrier with a lower surcharge, thereby violating the Commission's cost recovery principle that the cost recovery mechanism "not give one service provider an appreciable, incremental cost

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[7] For example, see MFS, pgs. 4-5.

[8] Affidavit of Richard D. Emmerson, attached to our Comments, p. 9.

[9] Id. at 10.

advantage over another service provider, when competing for a specific subscriber."[10] Therefore, we propose that a mandatory flat-rated end user surcharge be required of all carriers seeking to recover their number portability costs.

II. ALLOCATING COSTS ON THE BASIS ON GROSS REVENUES MINUS PAYMENTS TO OTHERS RESULTS IN NOT COMPETITIVELY NEUTRAL

We disagree with those carriers who seek allocation on the basis of gross revenues minus payments made to other carriers. As we pointed out in our comments, allocating costs in this manner is unfair and results in double taxation.[11] While excluding payments made to other carriers omits one source of double taxing the costs, payments received by the other carriers must similarly be excluded.[12]

We also disagree with proposals made to allocate costs on other bases. Airtouch, for example, seeks to use retail minutes of use as the allocation determinant.[13] Telecommunications Resellers Association ("TRA") wants to limit the gross revenue test proposed by the FCC to only revenues from the provision of local exchange service.[14] Obviously, such a scheme will have the incumbent LECs paying for virtually all the shared costs--not a competitively neutral system. MCI

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[10] Order, para 210.

[11] See Declaration of Richard Emmerson, attached to our comments, p. 4.

[12] Id.

[13] Airtouch, p. 8.

[14] TRA, p. 8.

seeks to use working telephone numbers as the allocation factor.[15] These allocation factors would obviously fall disproportionately on the incumbent LECs and do not meet the competitively neutral standard in the Act.

Both MCI and AT&T propose cost recovery methods for Type I costs that are unacceptable in that they shift costs disproportionately to the incumbent LECs. MCI wants to assess its "porting carrier allocation" on local service providers only. AT&T proposes to recover SMS charges through 5 rate elements to be assessed on users of the SMS. And, even AT&T admits, that local service providers should be assessed the portability information element based on their share of total working telephone numbers in portable NXXs.[16] Given that the LRN call processing scenario, developed by AT&T, requires all telephone numbers within an NXX to be loaded into the database as soon as one working telephone number in that NXX ports to another carrier, their proposal is extremely unfair. Both AT&T and MCI are seeking to do what the Telecommunications Act prohibits--make one segment of the industry responsible for paying for number portability.

Sprint wants to allocate shared database costs only to those carriers which provide local service in areas where portability is available in proportion to each carrier's share of presubscribed local service lines.[17] Allocating costs of the

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[15] MCI, p.5.

[16] AT&T, n. 11.

[17] Sprint. 6-7.

basis of local service lines will similarly direct costs disproportionately to the incumbent LECs.

III. THE FCC HAS JURISDICTION TO DETERMINE COST RECOVERY FOR NUMBER PORTABILITY

Section 251(e) vests the FCC with the responsibility and authority to determine cost recovery for number portability.

> The costs of ... number portability shall be borne by all telecommunications carrier on a competitively neutral basis *as determined by the Commission.* Section 251 (e) [emphasis added]

We therefore agree with Nynex, SBC, USWEST, and USTA that the FCC should impose rules for cost recovery of all number portability costs. As USWest explains, "Establishing an explicit federal cost recovery mechanism is the surest way for the Commission to guarantee that the federal policies underlying Congress's mandate-network interoperability, coordinated allocation of numbers, and promotion of competition-are adequately supported." We disagree with those commenters, such as the Public Utilities Commission of Ohio, who argue that the FCC should only define and allocate number portability costs, while the states should determine the cost recovery. The plain language of the statute requires the

FCC to set rules for cost recovery, just as the plain language of the statute gives the FCC the authority to dictate the requirements of how number portability will be implemented. See 47 U.S.C. 251(b)(2). While states may have expertise in determining cost recovery methodologies for other services, the FCC is the body Congress determined should set the rules for number portability. Allowing states to determine some portion of cost recovery of number portability costs risks inconsistent treatment throughout the country, potentially thwarting the federal policies Congress identified in giving exclusive jurisdiction to the FCC.

Competitively neutral cost recovery should not apply to those situations where one carrier ports numbers on behalf of another, or where one carrier performs database dips for another, by agreement. For example, if a terminating carrier receives a call that has not been "dipped", it should be able to charge the noncompliant carrier for that service. It would not be fair to have all carriers share in the payment of those costs.

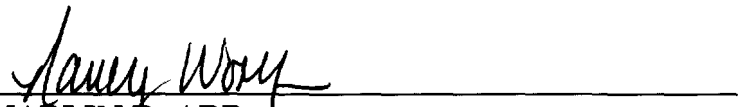
IV. CONCLUSION

The Commission should mandate a flat-rated end user surcharge to recover the shared costs allocable to a carrier (Type I costs) as well as the Type II carrier specific costs it incurs to implement number portability. The allocation methodology should be on the basis of gross revenues less payments made to *and received by* other carriers, in order to avoid double taxation. Finally, the FCC

should issue rules governing the recovery of all costs attributable to number portability without utilizing separations.

Respectfully submitted,

PACIFIC TELESIS GROUP



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CERTIFICATE OF SERVICE

I, Bernie Peters, certify that the following is true and correct:

I am a citizen of the United States, State of California and over eighteen years of age.

My business address is 140 New Montgomery Street, San Francisco, CA 94105

On September 16, 1996, I served the attached "Reply Comments of Pacific TELESIS Group in the matter of Telephone Number Portability, CC Docket No. 95-116" by placing true copies thereof in envelopes addressed to the parties in the attached list, which envelopes, with postage thereon fully prepaid, I then sealed and deposited in a mailbox regularly maintained by the United State Government in the City and County of San Francisco, State of California.

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